

REMARKS

In the Non-Final Office Action mailed October 20, 2009, claims 1-22 were pending and rejected for various reasons. Reconsideration and allowance of the present application in view of the remarks that follow is respectfully requested.

Claim Objections

Claim 22 has been objected to because the phrase “website type” is believed to be misleading and confusing. Without acquiescing in this assertion, claim 22 has been amended to recite “. . . wherein the computer network includes the internet, the server is a website” The amendment to claim 22 conforms to the suggestion provided by the Office Action. Accordingly, it is believed the objection to claim 22 has been obviated.

Claim Rejections

35 U.S.C. §101 Rejections

Claims 16-18 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. More particularly, the Office Action suggests that these claims are directed to signals which do not fall into a statutory class of patentable subject matter. Applicant respectfully traverses this assertion. The Manual of Patent Examining Procedure (MPEP) §2106.01 indicates that when functional descriptive material is recorded on some computer-readable material, such as the computer-accessible device of claim 16, “it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.” In contrast, MPEP §2106(B) indicates that “a claim reciting only a musical composition, literary work, compilation of data, signal or legal document . . . *per se* does not appear to be a process, machine, manufacture or composition of matter.” Claim 16 is directed to a device that includes logic executable by a computer to perform a function (patient monitoring) by performing a series of operations. To that end, claim 16 recites functional descriptive material, which as defined in §2106.01 of the MPEP, “consists of data structures and computer programs which impart functionality when employed as a computer component.” See also, MPEP §2106.01(I). Accordingly, Applicant respectfully submits that the device of claim 16 is directed to statutory

subject matter. Claims 17 and 18 depend from claim 16 and are believed to comply with §101 for at least the same reasons. Accordingly, withdrawal of this rejection of claims 16-18 is respectfully requested.

35 U.S.C. §102 Rejections

Claims 1-12, 15-17 and 19-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,553,609 to Chen et al. It is well established that "an invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim." Richardson v. Suzuki Motor Co. Ltd., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The claims must not be treated as "mere catalogs of separate parts, in disregard of the part-to-part relationships set forth in the claims and that give the claims their meaning." Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company et al., 730 F.2d 1452, 1459, 221 USPQ 481, 486 (Fed. Cir. 1984). As a result, a reference that coincidentally lists features of a claim without describing the claimed arrangement, relationship, and organization of such features cannot anticipate. For the reasons that follow, Chen does not anticipate these claims.

Chen is generally directed to a system that facilitates a virtual "in-home" visit between a patient and a health care professional located remotely from the patient's home. See e.g., Chen, column 4, lines 51-54. The system includes three overall levels which are defined by a Supervisory Control Center (SCC) 22, a number of Master Monitoring Stations (MMS) 24 and a number of Slave Monitoring Stations (SMS) 26. See, Chen, column 6, lines 25-30. The MMS's 24 each include a modem that can be linked to a modem of each of the SMS's 26 utilizing standard telephone lines. See e.g., Chen, column 8, lines 20-24. With the modems linked, a healthcare professional can perform the "in-home" visits with patients. See generally, Chen, column 6, lines 38-43. Among other functions, the MMS's 24 can be used during communication with the patients to interact with the SMS's 26 to control audio/visual equipment placed in the patients' homes.

The MMS's 24 may also communicate with the SCC 22. The SCC 22 generally functions as a central command to oversee the operations of the individual MMS's 24. For example, the SCC 22 schedules "in-home" visits with patients and assigns appropriate health care providers to be responsible for conducting such visits. See e.g., Chen, column 6, lines 30-38. The SCC 22 includes a home care database 30 and a patient database 32. Home care database 30 includes information related to health care professionals and patient database 32 includes information related to patients requiring home health care. See e.g., Chen, column 6, lines 59-62 and column 7, lines 3-11. The SCC also includes an Administration Management portion 28 and a Schedule Management portion 34. Administration Management portion 28 accesses and updates the databases 30, 32 and may also oversee and update the Schedule Management portion 34. See, Chen, column 7, lines 17-21.

Contrary to assertions in the Office Action, Chen fails to disclose several features of the pending claims. For example, with respect to independent claim 1, Chen fails to disclose "receiving a patient follow-up request from a practitioner" and "entering data in a patient information database maintained by the server in response to the patient follow-up request." As indicated above, Chen discloses that database 32 includes information related to patients requiring home health care; however, there is no disclosure describing how or why this information is initially entered into the database 32; i.e., there is no suggestion that the SCC 22 receives a patient follow-up request from a practitioner and then enters data into database 32 in response to the patient follow-up request per claim 1. Moreover, as would be appreciated by those skilled in the art, there could be numerous ways in which the patient information is received and entered into database 32 in lieu of that set forth in claim 1. For example, in one form a patient might initiate contact with the SCC 22 directly to request an "in-home" visit. Thus, the Office Action's application of Chen is flawed.

In addition, Chen also fails to disclose "sending the patient data to the practitioner from the patient information database" as recited in claim 1. In Chen, the health care professionals may enter patient data related to the "in-home" visit into database 32. However, once such data is entered into database 32, there is no disclosure that it is sent to a practitioner, let alone a practitioner from whom a follow-up request was received as set forth in claim 1. Instead, in

Chen it appears that the updated patient data is only available on database 32 to users of the system who log on and manually access the corresponding patent profile. The subject application discloses, at page 11, lines 12-14, “[i]n operation 140, the patient outcome results are faxed to the corresponding health care provider site 34. The fax can be generated and sent automatically in accordance with programming of server 24 and/or 26 from site 22, or sent from administration site 38.” The subject application also discloses that computer data transmission or voice transmission via telephone may be used as alternatives to the fax transmission. See, page 11, lines 18-21. In view of the foregoing, it is respectfully submitted that Chen also fails to disclose various features of independent claim 1 and therefore is not anticipated.

For at least the reasons set forth above, independent claim 1 is patentable over Chen. Accordingly, withdrawal of the rejection of independent claim 1 and allowance of the same are respectfully requested. Claims 2-5 depend from independent claim 1 and are patentable for at least the reasons supporting the patentability of independent base claim 1, although further reasons support the patentability of these claims. For example, claim 2 recites “wherein the health care monitor is a pharmacist.” With respect to this feature, the Office Action suggests that the “other health professionals” discussed in Chen includes pharmacists. See, Office Action, sentence spanning pages 2-3. Applicant respectfully traverses this suggestion. As indicated above, Richardson requires that every element of the claim must be literally present. By the Office Action’s own recognition, this element is not literally present in Chen. As another example, claim 5 includes “providing at least a portion of the patient data to a program sponsor through the computer network.” For reasons similar to those discussed above with respect to claim 1, Chen also fails to disclose providing patient data to a program sponsor.

Independent claim 6 is directed to a method that includes, among other features and elements, “generating an assignment of a patient contact to a health care monitor with the server” and “sending the patient data to a health care provider for the patient from the patient information database.” For at least the reasons discussed above with respect to independent claim 1, Chen does not disclose sending the patient data to a health care provider for the patient from the patient information database. Additionally, Chen discloses, at column 11, lines 22-24, “[w]ithin the SCC 22, high level task planning and job scheduling are performed off-line based

on actual demand, priority of visits and resources available.” This disclosure implies that the assignment of patients to a health care professional is not generated with a server. Thus, it appears that Chen also fails to disclose this feature of independent claim 6.

For at least the reasons set forth above, independent claim 6 is patentable over Chen. Accordingly, withdrawal of the rejection of independent claim 6 and allowance of the same are respectfully requested. Claims 7-15 depend from independent claim 6 and are patentable for at least the reasons supporting the patentability of independent base claim 6, although further reasons support the patentability of these claims. For example, claim 7 recites “wherein said generating is performed in response to a request from a health care provider.” As discussed above with respect to claim 1, Chen does not disclose receiving requests from a health care provider.

As another example, claim 8 recites “wherein the patient receives a prescription from the health care provider and the request from the health care provider is generated to determine compliance of the patient with the prescription.” While Chen may disclose that its system can be used to monitor patient compliance with medical treatment (see column 9, lines 41-42), it fails to disclose that the request to perform such monitoring is made by the health care provider from whom the prescription was received, as set forth in claim 8. Thus, Chen fails to anticipate claim 8. As another example, claim 9 recites “wherein the health care monitor is a pharmacist remotely located relative to the server.” As discussed above with respect to claim 2, Chen does not disclose this feature. Claim 11 includes entering a patient diagnosis and one or more drug codes into the patient information database, and designating the health care monitor to be a pharmacist. As suggested above, Chen does not disclose a pharmacist. Additionally, Chen does not disclose entering drug codes. In fact, this shortcoming is even recognized on page 5 of the Office Action. Thus, contrary to the requirements of Richardson, every element of claim 11 is not literally present, arranged as in the claim, in Chen. As yet another example, claim 15 includes the health care provider adjusting medical treatment of the patient in response to the patient data after said sending. Considering Chen’s failure to disclose sending patient data to a health care provider, the limitations of claim 15 are also not anticipated by Chen.

Independent claim 16 is directed to a computer-accessible device that includes logic executable by a computer server to perform patient monitoring by generating an assignment of a patient contact to a health care monitor from a patient information database maintained by the server in response to a request from a health care provider, sending the assignment to the health care monitor through a computer network coupled to the server, receiving patient data through the computer network from the health care monitor in response to the patient contact by the health care monitor, storing the patient data received from the health care monitor in the patient information database, and sending the patient data to the health care provider for the patient from the patient information database.

The Office Action indicates that the only difference between claim 16 and independent claims 1 and 6 is that it includes a computer accessible device. However, the Office Action goes on to suggest that this feature is disclosed by Chen from column 1, line 64 to column 2, line 28 and column 6, lines 22-50. See, Office Action, page 6. Applicant respectfully traverses this assertion, noting that Chen does not expressly or implicitly disclose whether system 20 is run by logic executable by a computer server. For example, as suggested above, it appears that certain portions of system 20 are controlled manually, such as assigning patients to health care professionals. Additionally, for reasons similar to those discussed above with respect to claim 1 and 6, Chen fails to disclose additional features of claim 16. For example, Chen at least fails to disclose logic executable by a computer server to perform patient monitoring by “generating an assignment of a patient contact to a health care monitor from a patient information database maintained by the server in response to a request from a health care provider” and “sending the patient data to the health care provider for the patient from the patient information database.” As discussed above, the assignment of patients in Chen does not appear to be generated by a server. Moreover, because Chen does not disclose requests from a health care provider, it also fails to disclose that any assignment of a patient contact to a health care monitor is generated in response thereto. Additionally, as discussed above, there is no disclosure that the patient information in database 32 is sent to anyone.

For at least the reasons set forth above, independent claim 16 is patentable over Chen. Accordingly, withdrawal of the rejection of independent claim 16 and allowance of the same are

respectfully requested. Claims 17-18 depend from independent claim 16 and are patentable for at least the reasons supporting the patentability of independent base claim 16.

Independent claim 19 is directed to a system that includes, among other features, a server operable to maintain a patient information database; an administrative computer; one or more practitioner computers; one or more health care monitor computers; a computer network coupled to the server, the administrative computer, the one or more practitioner computers, and the one or more health care monitor computers; and wherein the server is operable to send data about the patient response to at least one of the one or more practitioner computers from the patient information database.

The Office Action indicates that the only difference between claim 19 and the other independent claims is that it is directed to a system. Chen fails to disclose several features of claim 19. For example, the system of Chen does not include one or more practitioner computers and one or more health care monitor computers. Chen's system includes computers at the SCC 22, the MMS's 24 and the SMS's 26. None of these are practitioner computers. More particularly, the computers at the SCC 22 are used for scheduling and administrative purposes while the computers at the SMS's 26 are used to facilitate the "in-home" visit. As a corollary, Chen also fails to disclose a computer network coupled to the server, the administrative computer, the one or more practitioner computers, and the one or more health care monitor computers.

As discussed above, Chen also fails to disclose a server that is operable to send data about the patient response to at least one of the one or more practitioner computers from the patient information database. Thus, for at least these reasons, Chen fails to disclose all the features and elements of independent claim 19. Accordingly, withdrawal of the rejection of independent claim 19 and allowance of the same are respectfully requested. Claims 20-22 depend from independent claim 19 and are patentable for at least the reasons supporting the patentability of independent base claim 19, although further reasons also support patentability of these claims. For example, claim 20 specifies that the system also includes a program sponsor computer coupled to the computer network, a feature which is also not disclosed by Chen. As a further example, claim 21 recites "wherein the server is operable to receive information about a

request from a practitioner to follow-up with the patient and generate an assignment of at least one of the patient contacts in response to the request from the practitioner.” As discussed above, Chen does not disclose receiving a request from a practitioner to follow-up with a patient, nor does it disclose a server that is operable to generate an assignment of a patient.

35 U.S.C. §103(a) Rejections

Claims 13-14 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chen in view of Official Notice. More particularly, the Office Action indicates that it takes Official Notice that the features of these claims, while not disclosed by Chen, are well known in the health care industry. Claims 13-14 and 17 depend from base claims 6 and 16, respectively, and are patentable for at least the reasons supporting the patentability of these base claims.

Additionally, Applicant respectfully traverses the Office Action’s reliance on the Official Notice to support these rejections. MPEP §2144.03(A) instructs that “[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” Furthermore, MPEP §2144.03(B), citing In re Soli, 317 F.2d 941, 945-46, 137 USPQ 797, 800 (CCPA 1963) and In re Chevenard, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943), instructs that if Official Notice is taken, the basis for such reasoning must be explicitly set forth, requiring the Examiner to “provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” It is respectfully submitted that the requirements set forth in MPEP §2144.03(B) have not been satisfied by the outstanding Office Action. Particularly, no technical or scientific reasoning has been provided to support the conclusion that the features of claims 13-14 and 17 are well known in the health care industry. Moreover, when these claims are considered in view of the claims from which they depend, and combined with its features, the notion that their features are well known in the health care industry is undermined.

Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 13-14 and 17. Alternatively, citation to one or more references to support the Official Notice is requested. If personal knowledge is being relied on to support the finding of what is known in

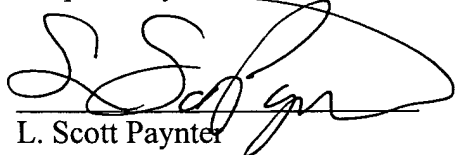
the art, an affidavit or declaration setting forth specific factual statements and supporting explanation is requested. See, MPEP §2144.03(C).

CONCLUSION

In view of the foregoing, it is respectfully submitted that the subject application is in condition for allowance with pending claims 1-22. Reconsideration of the present application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited.

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